

04/29/2003 16:29 FAX

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April 29, 2003

VIA FACSIMILE

Stephen M. Macfarlane, Esq.
Trial Attorney
U. S. Department of Justice
Environment and Natural Resources Division
501 I Street, Suite 9-700
Sacramento, CA 95814-2322

Re: Revised Part 417 Notice

Dear Steve:

I received by fax late yesterday, April 28, 2003, the Bureau of Reclamation's "Notice of Opportunity for Input Regarding Recommendations and Determinations Authorized by 43 C.F.R. Part 417, Imperial Irrigation District" (the "Notice"). Without waiving any of the matters raised in my letter of April 25, 2003, addressed to you and to the Secretary regarding the new Part 417 process, there are some discrepancies in the Notice that I wish to have clarified. Secondly, I would like to confirm the method to be used to compute all deadlines in the Notice.

The Notice is dated April 23, 2003, but was not published in the Federal Register until April 29, 2003. Page 1 of the Notice, under "Dates," states that the "Regional Director will accept input on the issues . . . for a period of 30 days following publication of this notice." On page 3, however, the Notice states that the "Regional Director will also consider all relevant written information, comments and suggestions received by Reclamation . . . within 30 days of the date of this notice." Are those meant to be different things with different deadlines? Calculating 30 days from publication is May 29, 2003. Calculating 30 days from the date of the Notice is May 23, 2003. Please clarify the Bureau's intentions.

Further, the Notice uses "within" in setting forth deadlines (e.g., "within 30 days of the date of receipt," "within 15 days.") We believe that Federal Rule of Civil Procedure 6(a) should be used for counting days and calculating all deadlines. For example, Rule 6(a) provides in part: "[T]he day of the act, event, . . . from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, . . . in which event the period runs until the end of the next day which is not one of the aforementioned days." Rule 6(e) also addresses the issue of adding additional time after service by mail.

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I would appreciate receiving promptly your response to the issues raised in this letter.

Very truly yours,


David L. Osias

DLO:cas

cc: John Penn Carter, Esq.

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bcc: Jeffrey R. Patterson, Esq.
Mark J. Hattam, Esq.